IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NOS.29, 65, 160, 221/2000 with
CROSS OBJECTION NO.19/2001, 222/2000 within
CROSS OBJECTION 20/2001, 54/2002,
147/2000, 46 AND 203 OF 2002

FIRST APPEAL NO. 29 OF 2000

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

1. Govind Jiu Dessai,
(expired) represented through LRs.

i. Parvati Govind Dessai,
ii. Pramod Govind Dessai,
iii. Tanuja Govind Dessai,
All residing at Patnem,
Canacona, Goa. ..... Respondents.

Mr. E. Afonso, Advocate for the appellants.

Mr. P.A. Kamat, Advocate for the respondents.

FIRST APPEAL NO. 65 OF 2000

1. Special Land Acquisition

Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

1. Janardhan Krishna Naik,
Nagorcem- Canacona, Goa. ..... Respondents.

Mr. E. Afonso, Advocate for the appellants.

Mr. P.A. Kamat, Advocate for the respondents.

FIRST APPEAL NO. 160 OF 2000

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

Sushila Shanta Fal Dessai,
Patne, Canacona - Goa ..... Respondent.

Mr. E. Afonso, Advocate for the appellants.

Mr. P.A. Kamat, Advocate for th respondent.

FIRST APPEAL NO. 221 OF 2000

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

1. Devappa Laxman Gaunkar,
Tembewada, Nagorcem,
Canacona, Goa. ..... Respondent.

Mr. E. Afonso, advocate for the appellants in all the appeals.

Mr. P. A. Kamat, advocate for the respondent.

CROSS OBJECTION NO. 19/2001

Devappa Laxman Gaunkar,
Tembewada, Nagorcem,
Canacona, Goa. ..... Applicant.

V/s.

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan

Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Respondents.

Mr. P. A. Kamat, advocate for the applicant.

Mr. E. Afonso, Advocate for the respondents.

FIRST APPEAL NO. 222 OF 2000

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

1. Kusta Shivram Gaonkar,
House No.583,
Tembiwado, Nagorcem,
Cancona, Goa. ..... Respondent.

Mr. E. Afonso, Advocate for the appellants.

Mr. P.A. Kamat, Advocate the respondent.

CROSS OBJECTION NO. 20/2001

Kusta Shivram Gaonkar,
House No.583,
Tembiwado, Nagorcem,
Cancona, Goa. ..... Applicant.

V/s.

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Respondents.

Mr. P.A. Kamat, Advocate for the applicnat.

Mr. E. Afonso, Advocate for th respondent.

FIRST APPEAL NO. 54 OF 2002

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

1. Ashok Datta Naik Gaokar,
House No.853/4, Tembiwado,
Nagorcem- Cancona -Goa

2. Premanand Datta Naik Gaonkar,
House No.853/4, Tembiwado,
Nagorcem- Cancona, Goa. ..... Respondents.

Mr. E. Afonso, advocate for the appellants.

Mr. P.A. Kamat, advocate for the respondents.

FIRST APPEAL NO. 147 OF 2000

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

1. Milagrina Rodrigues,
r/o. Patnem-Canacona, Goa.

2. Eva Rodrigues, r/o. Patnem-
Canacona, Goa. ..... Respondents.

Mr. E. Afonso, Advocate for the appellants.

Mr. M.P. Amonkar, Advocate for th respondents.

FIRST APPEAL NO. 46 OF 2002

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

Conceicao D'Costa
House No.790, Patnem,
Canacona, Goa. ..... Respondent.

Mr. E. Afonso, Advocate for the appellants.

None for the respondent.

FIRST APPEAL NO. 203 OF 2002

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

Dattaram S. Komarpant,
Chaudi-Canacona, Goa. ..... Respondent.

Mr. E. Afonso, Advocate for the appellants.

Mr. M.P. Amonkar, Advocate for the respondents.

CORAM : A. P. LAVANDE, J.

DATE : 7th April, 2005.

ORAL JUDGMENT

All these appeals and cross objection 19/2001 and

20/2001 can be disposed of by common Judgment since the lands involved in these appeals are acquired by the same notification and the facts are almost identical. The learned Counsel appearing for the parties have also submitted that all these appeals be disposed of by common Judgment since the facts involved in all these appeals are almost identical. By notification dated 12.8.1991, issued under Section 4(1) of the Land Acquisition Act, 1894 (hereafter, referred to as `the Act'), the Government acquired large chunks of land for the Konkan Railway Corporation Ltd. The lands belonging to the respondents situated at Chaudi-Canacona were part of the acquired land. The details showing the land acquisition case numbers, corresponding appeal numbers, area acquired, survey numbers, and the dates of Judgments/Awards passed in each case are as follows :

L.A.C. No.	***Appeal No./ Cross Obj.***	***Area in m2***	***Survey Nos.***	***Date of Award of Ref. Court.***
111/1995	29/2000	9512-00	150/5,135/3, 88/2, 88/5, 88/11.	28.10.1999
113/1995	65/2000	2894-00	139/2	28.01.2000
80/1995	160/2002	3663-00	108/11, 108/2, 94/10, 92/2, 108/12.	31.08.1999
108/1995	221/2000	4972	134/14, 134/8, 100/10, 100/13, 100/15, 117/6, 101/20, 95/4, 101/22 & 120/8.	31.3.2000

L.A.C. No.	*Appeal No./ Cross Obj.*	*Area in m2*	*Survey Nos.*	*Date of Award of Ref. Court.*
108/1995	19/2001	4972	134/14, 134/8, 100/10, 100/13, 100/15, 117/6, 101/20, 95/4, 101/22 & 120/8.	31.3.2000
78/1995	222/2000	5698	101/8, 119/2, 100/13, 110/15, 100/10, 104/32, 104/28, 104/22, 103/16, 102/2, 102/10, 103/8, 101/2, 1, 117/4, 95/7, 120/9.	31.3.2000
78/1995	20/2001	5698	101/8, 119/2, 100/13, 110/15, 100/10, 104/32, 104/28, 104/22, 103/16, 102/2, 102/10, 103/8, 101/2, 1, 117/4, 95/7, 120/9.	31.3.2000
77/1995	54/2002	2044	119/1, 95/6	10/08/01
86/95	147/2000	1879	88/8, 106/1,105/8.	23.3.2000
110/95	46/2002	346	101/16, 118/6 and 119/5	15.10.2001
82/95	203/2002	1246	89/2, 89/4 & 89/9.	22.3.2002.

2. In respect of the lands involved in the above appeals, the Special Land Acquisition Officer, by Award dated 22.12.1993 fixed the compensation at the rate of Rs.8.10 per sq. metre for the tenanted lands and Rs.9/- per sq. metre for the untenanted lands.

The respondents in these appeals sought reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter, referred to as `the Act') claiming compensation at the rate ranging from Rs.100/- to Rs.150/- per sq. metre. In the reference Court, the respondents examined one witness each in respective cases and primarily relied upon Award dated 15.3.1989. The said Award was in respect of land acquired for an approach road to Talpona Galgibag bridge in Canacona Taluka. The said Award was in respect of an area of 1,34,400 sq. metres acquired by Notification dated 30.4.1986 issued under Section 4 (1) of the Act.

3. The Reference Court, while passing the Awards which are impugned in these appeals, relied upon said Award dated 15.3.1989 and after holding that the acquired lands are comparable and similar to the lands acquired which were subject-matter of the Award dated 15th March, 1989, fixed the compensation at the rate of Rs.24/- per sq. metre, after giving increase of 10 % per year from 1986.

4. Mr Afonso, learned Counsel appearing for the appellants submitted that the land involved in all these appeals being

agricultural lands, had no building potential and, therefore, the reference Court ought to have rejected the reference. According to the learned Counsel, the acquired lands, in all these appeals, were paddy fields. Relying upon the provisions of the Goa, Daman and Diu Agricultural Tenancy Act, 1964, Mr. Afonso submitted that the lands could not have been used for any purpose other than the agricultural purpose. According to the learned Counsel, the respondents in these appeals had not led any evidence to establish that they were entitled to higher compensation than the one fixed by the Special Land Acquisition Officer. Mr. Afonso further submitted that granting 10% increase every year taking the Award dated 15th March, 1989 as basis is unwarranted since in places like Canacona there could not have been 10% rise in the value of the property every year and secondly, the acquired lands were agricultural lands (paddy fields) and, as such, the value of the said lands could not have increased every year by 10 %. The learned Counsel further submitted that the respondents had not led any evidence about the development around the acquired lands from the year 1986 to 1991 to warrant increase of 10 % every year.

5. Per contra, Mr. Kamat, and Mr. Amonkar, learned Counsel

appearing for the respondents, in majority of the appeals, submitted that the reference Court was absolutely justified in placing reliance on the Award dated 15.3.1989, passed by the Special Land Acquisition Officer. In support of their submission, the learned Counsel placed reliance on the Judgments of the Apex Court in ***The State of Madras vs. A.M. Nanjan & Anr.*** (AIR 1976 SC 651) and ***Karan Singh & Ors. vs. Union of India*** (AIR 1997 SC 3889). Relying upon the Judgment of the Apex Court in ***Municipal Committee, Bhatinda and ors. vs. Balwant Singh and ors, ((***1995) 5 SCC 433), the learned Counsel submitted that the agricultural lands situated within the Municipal limits have potential value and, therefore, increase of 10% every year awarded by the Reference Court is justified. The learned Counsel also placed reliance on the Judgment of the Apex Court in the case of ***V.M. Salgoacar & Brother Ltd. vs. Union of India,*** ((1995) 2 SCC 302) and submitted that the reference Court was absolutely justified in granting increase of 10 % every year. Mr. Kamat, learned Counsel appearing for the appearing on behalf of respondents in First Appeals Nos. 221/2001 and 222/2001, who have filed cross objections No.19/2001 and 20/2001 claiming the entire compensation submitted that the reference Court ought not

to have granted the 50 % of the compensation to the respondents and 50 % in favour of the tenants. The learned Counsel submitted that the Special Land Acquisition Officer had awarded compensation at the rate of Rs.8.10 per sq. metre in favour of the respondents and Rs.0.40 paise in favour of the persons who were owners of the acquired land and the owners of the acquired land had not sought any reference. Therefore, according to the learned Counsel the entire compensation ought to have been awarded in favour of the respondents.

6. I have considered the submissions made by the learned Counsel for the parties. I have gone through the Judgments relied upon by the learned Counsel appearing for the respondents. I have gone through the records in each of these appeals.

7. The only point for determination which arises in all these appeals is whether the reference Court was justified in fixing the compensation in respect of the acquired lands at the rate of Rs.24/- per sq. metre and if not what is the compensation payable in respect of the acquired land ?

8. In so far as the submission of Mr. Afonso that the acquired lands had no building potential and therefore, the reference Court could not have enhanced the compensation is concerned, I am unable to accept the submission for the simple reason that the reference Court has relied upon an earlier Award passed in the year 1989 in respect of lands which are similar to the lands which are involved in the present appeals and situated in the proximity of the acquired lands. That being the position, in my opinion, the reference Court was fully justified in placing reliance upon the Award dated 15.3.1989 passed by the Special Land Acquisition Officer. It has to be noted that the reference Court has not fixed the compensation in respect of the acquired land on the basis of the building potential, but the compensation has been fixed on the basis of an earlier Award passed in respect of the lands which are similar to the lands involved in the present acquisition. The Apex Court has held that the compensation offered by the Land Acquisition Officer can be the basis for fixing the compensation when similar land is acquired at a later stage. The learned Counsel for the respondent is, therefore, justified in placing reliance on the Judgments of the Apex Court in the cases of ***The State of Madras vs. A.M. Nanjan & Anr.*** (supra) and ***Karan Singh & Ors. vs.***

Union of India (supra) in support of the submission that the awards given by the Land Acquisition Officer can be relied upon as a good piece of evidence for determining the market rate of the land acquired under certain circumstances. I am, therefore, of the view that the approach of the Reference Court in relying upon the Award dated 15.3.1989 cannot be faulted. It is not seriously disputed that the lands involved in the appeals are in the close proximity of the lands acquired by the Award dated 15.3.1989 and are similar in nature being paddy fields. That being the position, I do not find any infirmity in the finding given by the Reference Court that the compensation in respect of all these lands could be fixed at the rate of Rs.15/- per sq. metre in the year 1986.

9. The next question which arises for consideration is whether the reference Court was justified in granting increase of 10% every year. The reference Court has granted increase of 10 % on compounding basis, relying upon the Judgment of the Apex Court in the case of ***V.M. Salgoacar & Brother Ltd. vs. Union of India (supra)*** and fixed the compensation payable in respect of the acquired lands at the rate of Rs.24/- per sq. metre. Ordinarily, as held by the Apex Court, increase of 10% every year has to be

granted, but the question is whether the same principle should apply in cases where agricultural lands (paddy fields) are acquired and that too at a place situated in Taluka Canacona, which lies on the southern boundary of Goa. I find considerable force in the submission of Mr. Afonso that having regard to the nature and location of the lands acquired in the present cases, the reference Court ought not to have granted 10% increase every year. Although the lands acquired are paddy fields and situated in Municipal area of Canacona, the fact remains that there are certain restrictions on the use of such lands for any other purpose and secondly, the development in Canacona Taluka has not been as fast as in other major cities of Goa like Margao, Panaji, etc. Moreover, the respondents herein have not led any evidence to establish that there had been any development around the acquired lands from the years 1986 onwards. In my view, therefore, the increase in value of land having building potential cannot be equated with the increase in value of paddy fields having several restrictions in so far as their use is concerned. Nonetheless, the fact remains that judicial notice can be taken of the fact that land prices are increasing every year and even the prices of paddy fields increase every year. Considering the fact that the lands are paddy field and

are situated in Canacona Taluka, in my view, increase of 5% and not 10% every year would be justified. Accordingly, the respondents are entitled to increase of 5% every year from 1986. Therefore, the compensation in respect of the acquired lands comes to Rs.18.75 per sq. metre. I deem it appropriate to round it up to Rs.19/- per sq. metre. Needless to mention that the respondents would be entitled to all the statutory benefits under the Act.

10. In so far as the submission of Mr. Kamat that the respondents are entitled to the entire compensation and the owners of the acquired lands are entitled to Rs.0.40 paise per sq. metre, I find considerable force in the said submission. Mr. Afonso has fairly pointed out that the Special Land Acquisition Officer in the Award had awarded Rs.8.10 per sq. metre to the owners of the said lands. In other words, the market rate of the acquired lands has been fixed by the Special Land Acquisition Officer at the rate of Rs.8.50 per sq. metre and the Special Land Acquisition Officer had awarded Rs.8.10 per sq. metre to the respondents in respect of the acquired lands. Mr. Afonso submitted that the owners of the acquired lands have not sought any reference. Therefore, I am unable to accept the approach of the reference Court in awarding

50 % to the respondents and 50 % to the owners of the acquired lands on the basis of the judgment given by this Covert in First Appeal No.15/88 (***Shri Kashinath Govind Lawnis vs. The Comunidade of Bicholim and anr)*** decided on 22nd July, 1991. At this stage it is pertinent to note that the owners of the acquired lands had neither claimed higher compensation nor they were parties before the reference Court and therefore, the reference Court could not have awarded 50 % of the compensation to the owners, having regard to the fact that the owners were not aggrieved by the Award passed by the Special Land Acquisition Officer. In any event, the respondents had sought reference under Section 18 of the Act aggrieved by grant of compensation at the rate of Rs.8.10 per sq. metre awarded in respect of the acquired lands in favour of the respodents. If the reference Court was inclined to enhance the compensation, the reference Court ought to have awarded the entire enhanced compensation in favour of the respondents. Mr. Afonso, learned Counsel has stated that the owners have been already paid at the rate of Rs.0.40 paise per sq. metre and they have not sought any reference under the Act. That being the position, in my view the respondents are entitled to the entire compensation awarded. The respondents in First Appeals

No.221 and 222/2000 have filed cross-objections claiming the entire compensation and also for enhancement, being Cross Objections No.19 and 20 of 2001 respectively. Mr. Afonso has not opposed grant of entire compensation in favour of the respondents. I, therefore, hold that the respondents are entitled to compensation at the rate of Rs.19/- per sq. metre and the entire compensation has to be paid to the respondents in First Appeal No.221/2001 and 222/2001.

11. In view of the above discussion, the appeals are partly allowed. The impugned Awards mentioned in paragraph (1) above are modified, fixing the compensation at the rate of Rs.19/- per sq. metre. Cross Objection Nos. 19/2001 and 20/2001 are partly allowed. Cross objections to the extent the respondents claim entire compensation are allowed and to the extent the respondents claim enhancement are rejected. Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

A.P. LAVANDE, J.

ssm.